

**ECONOMIC DEVELOPMENT INCENTIVES FOR  
ALTERNATIVE ENERGY PROJECTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kevin T. Van Tassell**

House Sponsor: John G. Mathis

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Renewable Energy Development Act dealing with economic development incentives for alternative energy projects.

**Highlighted Provisions:**

This bill:

- ▶ changes the name of the Renewable Energy Development Act to the Alternative Energy Development Act;
- ▶ provides definitions for alternative energy, alternative energy development zones, and alternative energy project;
- ▶ provides the Governor's Office of Economic Development with criteria for determining a qualifying tax credit under the act; and
- ▶ makes certain conforming and technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63M-1-2801**, as enacted by Laws of Utah 2009, Chapter 198

**63M-1-2802**, as enacted by Laws of Utah 2009, Chapter 198

**63M-1-2803**, as enacted by Laws of Utah 2009, Chapter 198

30 63M-1-2804, as enacted by Laws of Utah 2009, Chapter 198

31 63M-1-2805, as enacted by Laws of Utah 2009, Chapter 198

32 63M-1-2806, as enacted by Laws of Utah 2009, Chapter 198



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section 63M-1-2801 is amended to read:

36 **Part 28. Alternative Energy Development Act**

37 **63M-1-2801. Title.**

38 This part is known as the "[renewable] Alternative Energy Development Act."

39 Section 2. Section 63M-1-2802 is amended to read:

40 **63M-1-2802. Findings.**

41 (1) The Legislature finds that:

42 (a) to foster and develop the [renewable] alternative energy industry in Utah, including  
43 generation and manufacturing, will promote the interest of Utah's citizens in encouraging the  
44 growth of the state's economy;

45 (b) Utah loses prospective high paying jobs, new economic growth, and corresponding  
46 incremental new state and local revenues to competing states due to a wide variety of  
47 competing [renewable] energy incentives offered by those states; and

48 (c) [renewable] alternative energy initiatives and interests of state and local officials  
49 should be aligned and united in [renewable] alternative energy generation and related  
50 manufacturing.

51 (2) This part is enacted to:

52 (a) increase generation of [renewable] alternative energy and create high paying jobs  
53 in the [renewable] alternative energy industry, thereby growing the state's economy and  
54 corresponding state and local revenues by providing tax credits to attract new [renewable]  
55 alternative energy projects and assist in the expansion of existing [renewable] alternative  
56 energy projects located within [renewable] alternative energy development zones in the state;  
57 and

58 (b) provide a cooperative and unified working relationship between state and local  
59 ~~[renewable]~~ alternative energy development efforts.

60 Section 3. Section **63M-1-2803** is amended to read:

61 **63M-1-2803. Definitions.**

62 As used in this part:

63 (1) (a) "Alternative energy" means:

64 (i) renewable energy that is derived from solar, wind, geothermal, biomass, or  
65 hydroelectric sources; and

66 (ii) petroleum coke, shale oil, nuclear fuel, tar sands, or oil-impregnated diatomaceous  
67 earth.

68 (b) "Alternative energy" does not mean conventional natural gas or petroleum.

69 (2) "Alternative energy development zone" means an alternative energy development  
70 zone created under Section 63M-1-2804.

71 (3) "Alternative energy project" means a development opportunity that involves:

72 (a) utility-scale alternative energy generation;

73 (b) the extraction of alternative fuels; or

74 (c) manufacturing of equipment used directly in alternative energy generation.

75 ~~[(+)]~~ (4) "Business entity" means a person that:

76 (a) conducts business in Utah; and

77 (b) enters into an agreement with the office that qualifies the person to receive a tax  
78 credit under Section 59-7-614.2 or 59-10-1107.

79 ~~[(2)]~~ (5) "High paying jobs" means the annual wages of employment positions in a  
80 business entity that compare favorably against the average wage of a community in which the  
81 employment positions will exist.

82 ~~[(3)]~~ (6) "New incremental jobs" means employment positions that are:

83 (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and

84 (b) created in addition to the baseline count of employment positions that existed  
85 within the business entity before the new commercial project.

86           ~~[(4)]~~ (7) "New state revenues" means:

87           (a) incremental new state sales and use tax revenues generated as a result of [a  
88 ~~renewable~~] an alternative energy project in [~~a renewable~~] an alternative energy development  
89 zone that a business entity pays under Title 59, Chapter 12, Sales and Use Tax Act;

90           (b) incremental new state tax revenues that a business entity pays as a result of [a  
91 ~~renewable~~] an alternative energy project in [~~a renewable~~] an alternative energy development  
92 zone under:

93           (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

94           (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and  
95 Information;

96           (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;

97           (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or

98           (v) a combination of Subsections ~~[(4)]~~ (7)(b)(i) through ~~[(4)]~~ (7)(b)(iv);

99           (c) incremental new state tax revenues generated as individual income taxes under  
100 Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information,  
101 paid by employees of the new commercial project as evidenced by payroll records from the  
102 business entity; or

103           (d) a combination of Subsections ~~[(4)]~~ (7)(a) through ~~[(4)]~~ (7)(c).

104           ~~[(5)]~~ (8) "Office" means the Governor's Office of Economic Development.

105           ~~[(6)] "Renewable energy" means the energy generation as defined in Subsection~~  
106 ~~10-19-102(11) and includes generation powered by nuclear fuel.]~~

107           ~~[(7)] "Renewable energy development zone" means a renewable energy development~~  
108 ~~zone created under Section 63M-1-2804.]~~

109           ~~[(8)] "Renewable energy project" means a development opportunity that involves~~  
110 ~~renewable energy generation or manufacturing of equipment used directly in renewable energy~~  
111 ~~generation of increased energy efficiency.]~~

112           (9) "Tax credit" means an economic development tax credit created by Section  
113 59-7-614.2 or 59-10-1107.

114 (10) "Tax credit amount" means the amount the office lists as a tax credit on a tax  
115 credit certificate for a taxable year.

116 (11) "Tax credit certificate" means a certificate issued by the office that:

117 (a) lists the name of the applicant;

118 (b) lists the applicant's taxpayer identification number;

119 (c) lists the amount of the tax credit that the office awards the applicant for a taxable  
120 year; and

121 (d) may include other information as determined by the office.

122 Section 4. Section **63M-1-2804** is amended to read:

123 **63M-1-2804. Creation of alternative energy development zones -- Tax credits.**

124 (1) The office, with advice from the board, may create [~~a renewable~~] an alternative  
125 energy development zone in the state that satisfies the following requirements:

126 (a) the area is zoned commercial, industrial, manufacturing, business park, research  
127 park, or other appropriate use in a community approved master plan;

128 (b) the request to create [~~a renewable~~] an alternative energy development zone has  
129 been forwarded to the office after first being approved by an appropriate local government  
130 entity; and

131 (c) the local government entity has committed or will commit to provide incentives,  
132 which may include an abatement of some or all of the property taxes for up to 30 years for [~~a~~  
133 ~~renewable~~] an alternative energy project qualified under this part.

134 (2) (a) By following the procedures and requirements of Title 63G, Chapter 4,  
135 Administrative Procedures Act, the office shall set standards that a business entity must meet  
136 to qualify for a tax credit under this part.

137 (b) The office shall ensure that those standards include the following requirements:

138 (i) the [~~renewable~~] alternative energy project must be within [~~a renewable~~] an  
139 alternative energy development zone;

140 (ii) the [~~renewable~~] alternative energy project includes direct investment within the  
141 geographic boundaries of the [~~renewable~~] alternative energy development zone;

142 (iii) the ~~renewable~~ alternative energy project brings new incremental jobs to Utah;

143 (iv) the ~~renewable~~ alternative energy project includes significant capital investment,  
144 the creation of high paying jobs, or significant purchases from Utah vendors and providers, or  
145 any combination of these three economic factors;

146 (v) the ~~renewable~~ alternative energy project generates new state revenues; and

147 (vi) the business entity qualifying for the tax credit meets the requirements of Section  
148 63M-1-2405.

149 (3) (a) The office, with advice from the board[;];

150 (i) may enter into an agreement with a business entity authorizing a tax credit to a  
151 business entity that meets the standards established under Subsection (2); and

152 (ii) shall consider economic modeling, including the costs and benefits of the  
153 alternative energy project to state and local governments, in determining the tax credit amount.

154 (b) The office may not authorize or commit a tax credit to a business entity that  
155 exceeds 100% of the new state revenues generated by the business entity's ~~renewable~~  
156 alternative energy project over the life of ~~a renewable~~ an alternative energy project or 20  
157 years, whichever is less.

158 (4) The office shall ensure that the agreement with the business entity that is described  
159 in Subsection (3):

160 (a) details the requirements that the business entity must meet to qualify for a tax  
161 credit under this part;

162 (b) specifies the maximum amount of tax credit that the business entity may earn over  
163 the life of the ~~renewable~~ alternative energy project;

164 (c) establishes the length of time the business entity may claim a tax credit;

165 (d) requires the business entity to retain records supporting its claim for a tax credit for  
166 at least four years after the business entity claims a tax credit under this part; and

167 (e) requires the business entity to submit to audits for verification of the tax credit  
168 claimed.

169 Section 5. Section **63M-1-2805** is amended to read:

170 **63M-1-2805. Qualifications for tax credit -- Procedure.**

171 (1) The office shall certify a business entity's eligibility for a tax credit as provided in  
172 this section.

173 (2) A business entity seeking to receive a tax credit shall provide the office with:

174 (a) an application for the tax credit certificate;

175 (b) documentation of the new state revenues generated from the business entity's  
176 [~~renewable~~] alternative energy project that were paid during the preceding calendar year; and

177 (c) a document that expressly directs and authorizes the State Tax Commission to  
178 disclose to the office the business entity's returns and other information concerning the  
179 business entity that would otherwise be subject to confidentiality under Section 59-1-403 or  
180 Section 6103 of the Internal Revenue Code.

181 (3) (a) The office shall submit the document referred to in Subsection (2)(c) to the  
182 State Tax Commission.

183 (b) Upon receipt of the document, the State Tax Commission shall provide the office  
184 with the information requested by the office that the business entity directed or authorized the  
185 State Tax Commission to provide to the office in the document referred to in Subsection  
186 (2)(c).

187 (4) If after review of the information provided by the business entity and the State Tax  
188 Commission the office determines that the documentation provided by the business entity is  
189 not substantially accurate, the office shall either:

190 (a) deny the tax credit; or

191 (b) inform the business entity that the documentation was inadequate and ask the  
192 business entity to submit new documentation.

193 (5) If after review of the information provided by the entity and the State Tax  
194 Commission the office determines that the documentation provided by the business entity is  
195 substantially accurate, the office shall, based upon the documentation:

196 (a) determine the amount of the tax credit to be granted to the business entity;

197 (b) issue a tax credit certificate to the business entity; and

198 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

199 (6) A business entity may not claim a tax credit under this part unless the business  
200 entity has a tax credit certificate issued by the office.

201 (7) A business entity that claims the credit under this section shall retain the tax credit  
202 certificate in accordance with Section 59-7-614.2 or 59-10-1107.

203 Section 6. Section **63M-1-2806** is amended to read:

204 **63M-1-2806. Report to the Legislature.**

205 The office shall report annually to the Legislature's Workforce Services and  
206 Community and Economic Development Interim Committee and the Utah Tax Review  
207 Commission describing:

208 (1) its success in attracting [~~renewable~~] alternative energy projects to [~~renewable~~]  
209 alternative energy development zones under this part and the corresponding increase in new  
210 increment jobs;

211 (2) the amount of tax credits promised and the period of time over which the tax  
212 credits will be paid; and

213 (3) the economic impact on the state related to generating new state revenues and  
214 providing tax credits under this part.